

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 604

Introduced by Assembly Member Ammiano

February 20, 2013

An act to add Section 806 to the Evidence Code, and to add Sections 686.3 and 1127i to the Penal Code, relating to criminal investigations.

LEGISLATIVE COUNSEL'S DIGEST

AB 604, as amended, Ammiano. Criminal investigations: eyewitness identification.

Existing law allows opinion testimony from expert witnesses to be admitted at trial upon specified showings.

This bill would allow expert testimony regarding the reliability of an eyewitness identification to be admitted at trial if the proponent of the evidence establishes relevancy and proper qualifications of the witness.

Existing law generally regulates the collection and admissibility of evidence for purposes of criminal prosecutions.

This bill would authorize any law enforcement agency to adopt regulations for conducting photo and live lineups with eyewitnesses, and provides that specified procedures should be considered when adopting the regulations, including sequentially presenting photos used in an identification procedure and separating all witnesses when viewing an identification procedure.

Existing law provides that in any criminal case which is being tried before the court with a jury, all requests for instructions on points of law must be made to the court before commencement of argument.

This bill would require the court in a criminal trial or proceeding in which a witness testifies to an identification made before trial, as

specified, to ~~instruct~~ *give specified instructions to* the jury, *including an instruction* that they may consider evidence that law enforcement officers did or did not follow specified procedures during identification procedures when determining the reliability of the eyewitness identification.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) The goal of a law enforcement criminal investigation is to
3 find and apprehend the person or persons responsible for
4 committing a crime.

5 (b) Eyewitness identification procedure studies indicate that the
6 criminal justice system can significantly decrease the rate of
7 erroneous eyewitness identifications by implementing changes to
8 identification procedures.

9 (c) A decrease in the number of erroneous eyewitness
10 identifications will increase public trust in the criminal justice
11 system, which, in turn, will increase the ability of law enforcement
12 and prosecutors to convict the guilty and protect our communities.

13 (d) New policies and procedures, such as those recommended
14 by the National Institute of Justice, are readily available and have
15 proven effective in other jurisdictions. States, including New Jersey
16 and Oregon, have recognized and adopted the importance of tested
17 eyewitness identification procedures that are shown to increase
18 reliability. Several local jurisdictions in California have also
19 adopted tested eyewitness identification procedures with great
20 success and significant cost savings.

21 SEC. 2. Section 806 is added to the Evidence Code, to read:

22 806. Expert testimony may be admitted regarding factors that
23 affect the reliability of eyewitness identification, *including the*
24 *identification procedure*, if the proponent of the evidence
25 establishes relevancy and proper qualifications of the witness.

26 SEC. 3. Section 686.3 is added to the Penal Code, to read:

27 686.3. (a) Any local law enforcement agency, including, but
28 not limited to, police departments, sheriffs, and prosecutors, may
29 adopt regulations for conducting photo and live lineups with

1 eyewitnesses. In adopting the regulations, those agencies are
2 encouraged to consider all of the following procedures:

3 (1) Prior to conducting the identification procedure, and as close
4 in time to the incident as possible, have the eyewitness complete
5 a standardized form describing the perpetrator of the offense.

6 (2) If practicable, have the investigator conducting the
7 identification procedure be a person who is not aware of which
8 person in the identification procedure is suspected as the perpetrator
9 of the offense.

10 (3) Present photos used in an identification procedure
11 sequentially, and not simultaneously.

12 (4) Prior to any identification procedure, instruct an eyewitness
13 of all the following:

14 (A) The perpetrator may not be among the persons in the
15 identification procedure.

16 (B) The eyewitness should not feel compelled to make an
17 identification.

18 (C) An identification or failure to make an identification will
19 not end the investigation.

20 (5) If the identification procedure is being done sequentially,
21 instruct an eyewitness of all of the following prior to the
22 identification procedure:

23 (A) Each photograph or person shall be viewed one at a time.

24 (B) The photographs or persons shall be displayed in random
25 order.

26 (C) The eyewitness should take as much time as needed in
27 making a decision about each photograph or person before moving
28 to the next one.

29 (D) All photographs or persons will be shown to the eyewitness,
30 even if an identification is made before all photographs or persons
31 have been viewed.

32 (6) Compose an identification procedure so that the fillers
33 generally fit the description of the person suspected as the
34 perpetrator, and in the case of a photo lineup, the photograph of
35 the person suspected as the perpetrator resemble his or her
36 appearance at the time of the offense and does not unduly stand
37 out.

38 (7) If the eyewitness has previously viewed an identification
39 procedure in connection with the identification of another person
40 suspected of involvement in the offense, have the fillers in the

1 lineup in which the person suspected as the perpetrator participates
2 be different from the fillers used in any prior lineups.

3 (8) In a live lineup, have any identification actions, such as
4 speaking or making gestures or other movements, be performed
5 by all lineup participants.

6 (9) All live lineup participants shall be out of the view of the
7 eyewitness prior to the beginning of the identification procedure.

8 (10) Have only one suspected perpetrator included in any
9 identification procedure.

10 (11) Have all witnesses separated when viewing an identification
11 procedure.

12 (12) If the eyewitness identifies a person he or she believes to
13 be the perpetrator, then have all of the following apply:

14 (A) The investigator shall immediately inquire as to the
15 eyewitness's confidence level in the accuracy of the identification.

16 (B) No information concerning the identified person shall be
17 given to the eyewitness prior to obtaining the eyewitness's
18 statement of confidence level.

19 (13) Have a written record of the identification procedure be
20 made that includes, at a minimum, all of the following:

21 (A) All identification and nonidentification results obtained
22 during the identification procedure and signed by the eyewitness.

23 (B) A statement of the eyewitness' own words regarding how
24 certain he or she is regarding the accuracy of his or her
25 identification and signed by him or her.

26 (C) The names of all persons present at the identification
27 procedure.

28 (D) The date, time, and location of the identification procedure.

29 (E) If the identification procedure was conducted sequentially,
30 the order in which the photographs or persons were displayed to
31 the eyewitness.

32 (F) Color copies of all photographs used in a photo lineup.

33 (G) Identification information and the sources of all photographs
34 used in a photo lineup.

35 (H) Identification information for all individuals used in a live
36 lineup and a video recording of the lineup.

37 (b) For purposes of this section, the following terms have the
38 following meanings:

39 (1) "Eyewitness" means a person whose identification of another
40 person may be relevant in a criminal investigation.

(2) “Filler” means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(3) “Identification procedure” means either a photo lineup or a live lineup.

(4) “Investigator” means the person conducting the live or photo lineup.

(5) “Live lineup” means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

(6) “Photo lineup” means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

SEC. 4. Section 1127i is added to the Penal Code, to read:

1127i. In any criminal trial or proceeding in which a witness testifies to an identification made before trial, either by viewing photographs or in person lineups, the court shall instruct the jury as follows:

(a) The procedures listed in Section 683.3 of the Penal Code ~~increase the reliability of eyewitness identifications. are designed to decrease the likelihood of misidentification when the police conduct an identification procedure, such as a lineup.~~ As jurors, you may consider evidence that police officers did or did not follow those procedures when you decide whether a witness in this case was correct or mistaken in identifying the defendant as the perpetrator of the crime.

(b) *Use of these procedures alone does not mean that the witness is correct or is credible, but only that police followed procedures that are designed to decrease the likelihood that the witness will make a mistake during the lineup or other identification procedure.*

~~(b)~~
(c) If police officers did not follow the procedures recommended in Section 683.3 of the Penal Code, ~~you may view~~ consider the eyewitness identification with caution and close scrutiny. This does not mean that you may arbitrarily disregard his or her

- 1 testimony, but you should give it the weight you think it deserves
- 2 in the light of all the evidence in the case.

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